REMARKS AND ARGUMENTS

Applicants respectfully request reconsideration and allowance of all of the claims of the application. Claims 1-10, 12-15 and 17-32 are presently pending. Claims amended herein are 1, 9, 14 and 24. No claims are added, withdrawn or cancelled herein.

Claim Amendments

Without conceding the propriety of the rejections herein and in the interest of expediting prosecution, Applicants amend claims 1, 9, 14 and 24 herein. Applicants amend claims to clarify claimed features. Such amendments are made to expedite prosecution and more quickly identify allowable subject matter. Such amendments are merely intended to clarify the claimed features, and should not be construed as further limiting the claimed invention in response to the cited documents.

FORMAL MATTERS

Double-Patenting Rejection

Based upon co-pending application US 7,546,127, the Examiner rejects claims 1-10, 12-15 and 17-32 on the grounds of non-statutory obviousness-type double-patenting.   Accordingly, Applicants submit herewith a terminal disclaimer in compliance with 37 CFR 1.321 and respectfully request that the rejection be withdrawn.

SUBSTANTIVE MATTERS

Claim Rejections under 35 USC §103

The Examiner rejects claims 1-10, 12-15 and 17-32 under § 103. The Examiner's rejections are based upon the following documents alone and/or in combination:

- **Knauerhase** : *Knauerhase et al.*, US Patent Publication No. 2003/0104819 A1;

- **Callegari** : *Callegari*, US Patent Publication No. 2003/0055983 A1;

- **Murray** : *Murray*, US Patent No. 6,484,033 B2;

- **Miyamoto** : *Miyamoto*, US Patent Publication No. 2003/0114171;

- **Zmolek** : *Zmolek*, US Patent Publication No. 2003/0154293; and

- **Giniger** : *Giniger et al.*, US Patent No. 6,985,742.

For the reasons set forth below, the Examiner has not made a prima facie case showing that the rejected claims are obvious. Accordingly, Applicants respectfully request that the § 103 rejections be withdrawn and the case be passed along to issuance.

Obviousness Rejections

Lack of Prima Facie Case of Obviousness (MPEP § 2142)

Applicants respectfully disagree with the Examiner's obviousness rejections. Arguments presented herein point to various aspects of the record to demonstrate that all of the criteria set forth for making a prima facie case have not been met.

Based upon Knauerhase and further in view of Callegari and Murray

The Examiner rejects claims 1-3, 5, 7-10, 12-15, 17-18, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Knauerhase and further in view of Callegari and Murray. Applicants respectfully traverse the rejection of these claims and ask the Examiner to withdraw the rejection of these claims.

Independent Claims 1, 9, 15 and 24

All words in these claims must be considered in judging their patentability against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). *See* also MPEP 2143.03. Applicants are unable to find in the cited documents, either alone or in combination, any disclosure, teaching or suggestion of at least the following elements as recited in these claims:

- "the presence server defining one or more associated location/presence correlation pairs defining a geographical area including a user-defined boundary around one or more locations and corresponding presence status; wherein a presence status of the user is maintained if the network client is within the borders of the geographical area"

- "wherein the location/presence correlation pairs further include availability status indicia over a plurality of media associated with the user"

- "a first timer for providing a timer tick for confirming functionality of the network clients"

- "a second timer for providing one or more hysteresis indications to prevent speed and boundary toggling."

The Examiner concedes (Action p. 6) that Knauerhase does not disclose, teach or suggest a user-defined boundary, and a first timer for providing a timer tick for confirming functionality and a second timer for providing one or more hysteresis indications to prevent spend and boundary toggling. To compensate for these defects, the Examiner relies on Callegari and Murray. Applicants respectfully disagree.

The present Application describes a user-defined boundary around one or more locations. A presence state of a user is maintained if the network client is within the borders of the geographical area. As shown in FIG. 3C of the present Application, for example, a user may select a map location *and a radius or other boundary* around it. The term "boundary," by its plain meaning, *cannot* be equated to merely a particular map location. *See In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification.") *See also* MPEP 2111.01.

In contrast, Callegari only allows the user to manually send location information for each site by entering *an address or street intersection. See*, e.g., Callegari at paragraph [0101] lines 4-6. The user does not appear to be able to define a "boundary" around the particular location. The "geographic area" described in Callegari paragraph [0099] lines 1-6 appears to be pre-defined by the government agencies and/or

commercial enterprises which are providing the information content, not the user whose presence status is maintained, as generally recited in these claims.

In addition, Applicants are unable to find in the cited documents any disclosure, teaching or suggestion of a first timer for providing a timer tick for confirming functionality of the network clients. As described in the original Specification at least at page 27 line 18 to page 29 line 31, a watchdog timer may be provided to allow for confirmation that the network clients are still running. The Examiner has not indicated where in the cited documents discloses, teaches or suggests this claimed element. Consequently, a necessary element of a *prima facie* case of obviousness is absent.

Further, Applicants are unable to find in the cited documents any disclosure, teaching or suggestion of a second timer for providing one or more hysteresis indications to prevent speed and boundary toggling. The present Specification (page 31 line 25 to page 33 line 3) describes a hysteresis timer that can be used to prevent speed and boundary toggling. For example, the presence status may be defined based on user speed. A user speed of, say 15 miles per hour or greater can be associated with a presence status of "In car" and an availability of "cell phone." As can be appreciated, particularly when driving in large cities and when stopped at a light or in traffic, the user's speed may not be constantly above 15 miles per hour. To prevent continuous toggling, a hysteresis time threshold can be set and transferred to the remote device. That is, when a user is "In Car," the appropriate system component must determine that the user has been traveling at a speed below the threshold for a predetermined period prior to deciding that his presence status has changed.

In contrast, Murray merely describes a wireless communication device 32 which stores current information 111 (e.g., current location 122, current speed 124, current

direction 126, traffic data 171) and event information 120 (e.g. event time 132, event location 134, event criteria parameters 129, event backup information 136). *See,* e.g., Murray at Col. 6 lines 26-31. The user may be alerted of the upcoming scheduled event if a match is found between the event information 120 and the event criteria parameters 128. *See,* e.g., Murray at Col. 11 lines 1-43; FIG. 8. Applicants are unable to find, in Murray, any teaching or suggestion of providing a timer capable of providing hysteresis indications to prevent speed and boundary toggling, as recited in these claims. In fact, there is no need for such timer since the wireless communication device 32 in Murray does not appear to monitor the *time period* during which the current information meets the event criteria parameters.

Finally, Applicants are unable to find in the cited documents any teaching or suggestion, alone or in combination, of location/presence correlation pairs further including availability status indicia over a *plurality of media associated with the user.* In Knauerhase, all presence rules are dependent solely upon the status of the *particular* mobile device and not the particular user. *See,* for example, Knauerhase at Abstract. That is, the presence rules of Knauerhase define a presence with respect to the device alone and not plural media or devices associated with the user, as generally recited in the claims at issue.

As shown above, the combination Knauerhase, Callegari and Murray does not teach or suggest all of the elements and features of these claims. Accordingly, Applicants respectfully ask the Examiner to withdraw the rejection of these claims.

No Reason to Combine References

The Examiner admits that Knauerhase fails to teach including a user-defined

boundary; and a first timer for providing a timer tick for confirming functionality and a

second timer for providing one or more hysteresis indications. To compensate for these

defects, the Examiner relies on Callegari and Murray. The Examiner indicates (Action

p. 6) the following reason why one of ordinary skill in the art would combine the teaching

of these cited documents:

> It would have been obvious to one skill in the art at the time of the invention to
> modify Knauerhase, such that the user may report or define his location and a first
> timer for providing a timer tick for confirming functionality and a second timer for
> providing one or more hysteresis indications to prevent speed and boundary
> toggling, to provide means for monitoring the location or position more accurately
> and efficiently and in accordance to the user's preferences and provide means to
> control the position of the user securely and accurately.

"[R]ejections on obviousness grounds cannot be sustained by mere conclusory

statements; instead, there must be some articulated reasoning with some rational

underpinning to support the legal conclusion of obviousness," *KSR International Co. v.

Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007). In his rejection, the Examiner's articulated

reasoning why one of ordinary skill in the art at the time of the invention would have

looked towards and combined the disclosure of Knauerhase, Callegari and Murray is

because it "provide means for monitoring the location or position more accurately and

efficiently and in accordance to the user's preferences and provide means to control the

position of the user securely and accurately." Applicants respectfully submit that the

Examiner's reason is merely conclusory without any rational underpinning to support the

legal conclusion of obviousness. The Examiner, in concluding obviousness, has

overlooked or failed to take into consideration the interrelationship of the references and

the background knowledge possessed by a person having ordinary skill in the art to

determine whether there was an apparent reason to combine the known elements in the fashion as claimed. See *KSR* at 14.

For example, Knauerhase, Callegari and Murray describe different fields of endeavor, and the matter with which each document deals would not have logically commended itself to an inventor's attention in considering his or her invention as a whole. More particularly, Knauerhase describes a method for automatically updating presence information for a mobile device when a presence rule is met. See, for example, Knauerhase at Abstract. Callegari describes a method for providing a virtual journal entry to a selected person when the selected person is within the vicinity of the location of interest. See, for example, Callegari at Abstract. Callegari appears to be concerned with maintaining the presence of merchants in the presence server, and not of the mobile devices. See, for example, Callegari at paragraphs [0039] and [0053]. Murray describes a wireless communication system for location based schedule management, which has nothing whatsoever to do with providing presence or availability information of a user. See, for example, Murray at Abstract. A person of ordinary skill in the art will not be led to combine disclosures relating to systems for providing presence information, virtual journal entries and schedule management, as described by these cited documents.

Moreover, even if there were a rational reason to combine the documents as suggested, such a combination would still fail to disclose, teach or suggest the features of the claims at issue. For example, claim 1 requires a first timer for providing a timer tick for confirming functionality of the network clients and a second timer for providing one or more hysteresis indications to prevent speed and boundary toggling. As

discussed above, these, and other features of the claims at issue, are neither disclosed,

taught nor suggested by the cited documents.

Accordingly, Applicants respectfully ask the Examiner to withdraw the rejection of

these claims.

Dependent Claims 2-3, 5, 7-8, 10, 12-14, 17-18

These claims ultimately depend upon independent claim 1, 9, or 15. As

discussed above, claims 1, 9, and 15 are allowable. It is axiomatic that any dependent

claim which depends from an allowable base claim is also allowable. Additionally,

some or all of these claims may also be allowable for additional independent reasons.

Based upon Knauerhase and further in view of Callegari and Murray and Miyamoto

The Examiner rejects claim 4 under 35 U.S.C. § 103(a) as being unpatentable

over Knauerhase and further in view of Callegari and Murray and Miyamoto.

Applicants respectfully traverse the rejection of this claim and ask the Examiner to

withdraw the rejection of this claim.

Claim 4 ultimately depend upon independent claim 1. As discussed above, claim

1 is allowable. It is axiomatic that any dependent claim which depends from an

allowable base claim is also allowable. Miyamoto fails to compensate for the defects of

Knauerhase, Callegari and Murray. For example, Applicants are unable to find, in

Miyamoto, the recited timers or such functionalities, as required by claim 1.

Additionally, claim 4 may also be allowable for additional independent reasons.

Accordingly, Applicants therefore respectfully ask the Examiner to withdraw the rejection of this claim.

Based upon Knauerhase and further in view of Callegari and Murray and Zmolek

The Examiner rejects claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Knauerhase and further in view of Callegari and Murray and Zmolek. Applicants respectfully traverse the rejection of this claim and ask the Examiner to withdraw the rejection of this claim.

Claim 6 ultimately depend upon independent claim 1. As discussed above, claim 1 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, claim 6 may also be allowable for additional independent reasons. Zmolek fails to compensate for the defects of Knauerhase, Callegari and Murray. For example, Zmolek fails to teach or suggest the recited timers or such functionalities, as required by claim 1. Further, Zmolek appears to provide a system for interconnecting presence systems and devices to derive a presence across systems (see, e.g., Zmolek at paragraphs [0049], [0055], [0056]) rather than defining a single set of rules for multiple devices in a single system or device, as generally recited in the claims at issue.

As such, Applicants respectfully ask the Examiner to withdraw the rejection of this claim.

Based upon Knauerhase and further in view of Callegari and Murray and Giniger

The Examiner rejects claims 19-20, 22-23, and 25-32 under 35 U.S.C. § 103(a) as being unpatentable over Knauerhase and further in view of Callegari and Murray and

Giniger. Applicants respectfully traverse the rejection of these claims and ask the Examiner to withdraw the rejection of these claims.

Claims 19-20, 22-23, 25-32 ultimately depend upon independent claim 15 or 24. As discussed above, claims 15 and 24 are allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, these claims may also be allowable for additional independent reasons.

Knauerhase, Callegari and Murray have been discussed above. Giniger fails to compensate for the defects of Knauerhase, Callegari and Murray. Giniger is relied on for allegedly teaching providing position related information to mobile recipients. However, even assuming that the characterization of Giniger is correct, like Knauerhase, Callegari and Murray, Giniger fails to teach or suggest the features of the underlying claims. For example, Giniger still fails to teach or suggest the timers and their associated functionalities as recited in these claims.

Accordingly, Applicants respectfully ask the Examiner to withdraw the rejection of these claims.

Based upon Knauerhase and further in view of Callegari and Murray and further in view of Giniger and Miyamoto

The Examiner rejects claim 21 under 35 U.S.C. § 103(a) as being unpatentable over Knauerhase and further in view of Callegari and Murray and further in view of Giniger and Miyamoto. Applicants respectfully traverse the rejection of this claim and ask the Examiner to withdraw the rejection of this claim.

Claim 21 ultimately depends upon independent claim 15. As discussed above, claim 15 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, claim 21 may also be allowable for additional independent reasons. Giniger and Miyamoto fail to compensate for the defects of Knauerhase, Callegari and Murray. For reasons similar to those discussed above, Applicants respectfully submit that this claim, too, is allowable.

Conclusion

In view of the foregoing, Applicants believe that all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

Should the Examiner believe that a telephone conference would expedite prosecution of this application, please contact me at your convenience.

Date: October 5, 2009

Respectfully submitted,

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